

Exhibit A
Defendants' Arguments in Support of
Defendants' Motion for Summary Judgment

**DEFENDANTS' ARGUMENTS IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

- A. Plaintiffs' civil penalty action is barred by diligent prosecution under a comparable state law (33 U.S.C. § 1319(g)(6)(A)(ii) and (iii)).

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 3, ¶ 7
2.	Dkt. #37	Brief in Support of Defendants' Motion for Summary Judgment	pp. 21-36
3.	Dkt. #30	Affidavit of Ricardo F. Gilson	
4.	Dkt. #35	Affidavit of George W. Riedesel	
5.	Dkt. #32	Affidavit of Brian P. McGrath	
6.	Dkt. #33	Affidavit of Gerald C. Allender	
7.	Dkt. #38	Appendix to Defendants' Motion for Summary Judgment	
8.	Dkt. #51	Reply Brief of Defendants' Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment	pp. 2-21
9.	Dkt. #51	Exhibits A-D, Reply Brief of Defendants to the Response in Opposition to Defendants' Motion for Summary Judgment	
10.	Dkt. #83	Brief in Support of Defendants' Amended Motion for Summary Judgment, Second Supplement to Brief in Support of Defendants' Motion for Summary Judgment and Brief in Opposition to Plaintiffs' Motion for Summary Judgment	pp. 7-8
11.	Dkt. #84	Fourth Supplemental Affidavit of George W. Riedesel	

- B. This Court lacks jurisdiction over Plaintiffs' claims for injunctive relief and civil penalties relating to pre-Complaint manhole discharges at 51st and 52nd Streets and Zimmerly Road and the pre-Complaint discharges alleged to have occurred on November 7, 2000 and August 16, 2001 because the discharges are wholly past.

1.	51st and 52nd Streets and Zimmerly Road		
	a.	Dkt. #29	Defendants' Motion for Summary Judgment p. 3, ¶ 8
	b.	Dkt. #43 Dkt. #52	Plaintiffs have withdrawn this claim. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment p. 1, n. 2-3 Plaintiffs' Reply to Defendants' Brief in Opposition to Plaintiffs' Motion for Summary Judgment p. 20
2.	November 7, 2000		
	a.	Dkt. #29	Defendants' Motion for Summary Judgment p. 3, ¶ 8
	b.	Dkt. #37	Brief in Support of Defendants' Motion for Summary Judgment pp. 37-42
	c.	Dkt. #35	Affidavit of George W. Riedesel
	d.	Dkt. 38	Appendix to Defendants' Motion for Summary Judgment
	e.	Dkt. #51	Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment pp. 21-22
	f.	Dkt. #42	Supplemental Affidavit of George W. Riedesel

3.	August 16, 2001		
	a.	Dkt. #29	Defendants' Motion for Summary Judgment p. 3, ¶ 8
	b.	Dkt. #43	Plaintiffs have withdrawn this claim. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment p. 1, n. 2-3
		Dkt. #52	Plaintiffs' Reply to Defendants' Brief in Opposition to Plaintiffs' Motion for Summary Judgment

- C. Plaintiffs' claims for injunctive relief and civil penalties relating to the manhole discharges are moot as discharges cannot reasonably be expected to occur at those locations in the future.

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 3, ¶ 9
2.	Dkt. #37	Brief in Support of Defendants' Motion for Summary Judgment	pp. 21-36
3.	Dkt. #30	Affidavit of Ricardo F. Gilson	
4.	Dkt. #35	Affidavit of George W. Riedesel	
5.	Dkt. #32	Affidavit of Brian P. McGrath	
6.	Dkt. #33	Affidavit of Gerald C. Allender	
7.	Dkt. #31	Affidavit of August E. Maas	
8.	Dkt. #38	Appendix to Defendants' Motion for Summary Judgment	
9.	Dkt. #51	Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment	pp. 23-26
10.	Dkt. #61	Supplement to Brief in Support of Motion for Summary Judgment and Defendants' Response to Plaintiffs' Motion for Summary Judgment	pp. 2-5
11.	Dkt. #63	Second Supplemental Affidavit of George W. Riedesel	

12.	Dkt. #68	Sur-Reply Brief in Response to Supplemental Plaintiffs' Reply to Defendants' Supplemental Brief in Opposition to Plaintiffs' Motion for Summary Judgment	pp. 3-5
13.	Dkt. #69	Third Supplemental Affidavit of George W. Riedesel	
14.	Dkt. #83	Brief in Support of Defendants' Amended Motion for Summary Judgment, Second Supplement to Brief in Support of Defendants' Motion for Summary Judgment and Brief in Opposition to Plaintiffs' Motion for Summary Judgment	pp. 7-8
15.	Dkt. #84	Fourth Supplemental Affidavit of George W. Riedesel	

D. Plaintiffs' claim relating to December 14, 1999 discharge is barred by the statute of limitations.

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 4, ¶ 10
2.	Dkt. #43	Plaintiffs have withdrawn this claim. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment	p. 20
	Dkt. #52	Plaintiffs' Reply to Defendants' Brief in Opposition to Plaintiffs' Motion for Summary Judgment	p. 1, n.2

E. Plaintiffs have failed to show irreparable harm as needed to support Plaintiffs' requested mandatory injunctive relief of requiring Defendants to assess and mitigate the environmental harm caused by the alleged illegal discharges must be rejected because Plaintiffs have failed to meet the standards required for the issuance of a mandatory injunction.

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 4, ¶ 11
2.	Dkt. #37	Brief in Support of Defendants' Motion for Summary Judgment	pp. 56-63
3.	Dkt. #31	Affidavit of August E. Maas	
4.	Dkt. #38	Appendix to Defendants' Motion for Summary Judgment	

5.	Dkt. #51	Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment	pp. 27-29
6.	Dkt. #51	Exhibit E (mislabeled in the text as Exhibit F), Reply Brief of Defendants Millcreek Township Sewer Authority and Millcreek Township to the Response in Opposition to Defendants' Motion for Summary Judgment	

- F. Plaintiffs have failed to show irreparable harm as needed to support Plaintiffs' requested mandatory injunctive relief of requiring Defendants to have a publicly available independent assessment of the facility conducted by a qualified individual or organization, agreed upon by all parties, to determine how the Defendants can best comply with the requirements of the CWA must be rejected because Plaintiffs have failed to meet the standards required for the issuance of a mandatory injunction.

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 4, ¶ 12
2.	Dkt. #43	Plaintiffs have withdrawn this claim. Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment	p. 25

- G. Plaintiffs have failed to show irreparable harm as needed to support Plaintiffs' requested mandatory injunctive relief of requiring Defendants to develop adequate standard operating procedures and an environmental management system to enable Defendants to attain and maintain compliance must be rejected because Plaintiffs have failed to meet the standards required for the issuance of a mandatory injunction.

1.	Dkt. #29	Defendants' Motion for Summary Judgment	p. 4, ¶ 13
2.	Dkt. #43	Plaintiffs have withdrawn this claim. Response in Opposition to Defendants' Motion for Summary Judgment	p. 25

- H. Plaintiffs' claims for injunctive relief and civil penalties relating to the discharges from the Kearsarge Pump Station are moot as the MTSA and Millcreek have completed the projects required by the 2003 COA, which ensure that such discharges cannot reasonably be expected to occur at those locations in the future.

1.	Dkt. #82	Defendants' Amended Motion for Summary Judgment	p. 3, ¶ 3
2.	Dkt. #83	Brief in Support of Defendants' Amended Motion for Summary Judgment, Second Supplement to Brief in Support of Defendants' Motion for Summary Judgment and Brief in Opposition to Plaintiffs' Motion for Summary Judgment	pp. 10-12
3.	Dkt. #35	Affidavit of George W. Riedesel	
4.	Dkt. #33	Affidavit of Gerald C. Allender	
5.	Dkt. #31	Affidavit of August E. Maas	
6.	Dkt. #38	Appendix to Defendants' Motion for Summary Judgment	
7.	Dkt. #84	Fourth Supplemental Affidavit of George W. Riedesel	
8.	Dkt. #85	Supplemental Affidavit of Brian P. McGrath	

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